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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE: TOYOTA MOTOR CORP.
UNINTENDED ACCELERATION
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

This document relates to:

ALL ECONOMIC LOSS CASES

Case No.: 8:10ML2151 JVS (FMOx)

**TOYOTA'S RESPONSE TO
PLAINTIFFS' OPPOSITION TO
APPLICATION TO FILE UNDER
SEAL**

1 On April 1, 2011, the Toyota Defendants ("Toyota") submitted their
2 Application to File and Maintain Under Seal Documents in Support of (1) Toyota's
3 Response to Certain Economic Loss Plaintiffs' Motion for the Application of
4 California Law and (2) Toyota's Cross-Motion for Choice-of-Law Determination as
5 to All Economic Loss Cases and Plaintiffs (the "Application"). Concerned that the
6 blanket sealing of documents could impede the public's ability to review the record in
7 this case relevant to the Court's pending choice-of-law determination, the Court
8 invited Plaintiffs to submit their views on Toyota's Application in an Order dated
9 April 5, 2011 (the "April 5th Order"). (Doc. 1211). Significantly, the April 5th Order
10 did not purport to alter or supersede the provisions of the First Amended Protective
11 Order (the "Protective Order") entered by the Court or the terms and conditions
12 contained therein regarding the designation of "Confidential" or "Highly
13 Confidential" materials or the challenging of such designations. (*See* Doc. 627).
14 Further, since the issuance of the April 5th Order and consistent with the provisions of
15 Paragraph 19 of the Protective Order, Toyota has filed redacted, public versions of all
16 but a handful of documents that are the subject of its Application. (See Docs. 1239-
17 1248). Toyota respectfully submits that these redacted, public filings adequately
18 address the Court's concerns as stated in the April 5th Order regarding the blanket
19 sealing of documents and are consistent with the intent behind, and the express
20 provisions of, the Protective Order.

21 With their Opposition to Toyota's Application, however, Plaintiffs attempt to
22 circumvent the agreed-upon procedures set forth in the Protective Order regarding the
23 making and challenging confidentiality designations, and they essentially ask the
24 Court to dedesignate and make available to the public all of the sensitive and
25 proprietary business information that Toyota has designated in good faith as
26 "Confidential" or "Highly Confidential." In doing so, Plaintiffs argue generally that
27 the bulk of the documents Toyota seeks to file under seal do not qualify for protection
28 under the Protective Order because they do not consist of "confidential or sensitive

1 information” or “non-public product design and testing information.” (Opp., p. 1:15-
2 2:2.) Notably, Plaintiffs previously have not raised these objections to the
3 designations at issue, despite the fact that many of the designations were made by
4 Toyota several months ago in connection with the Phase I depositions in this
5 litigation. Moreover, even if these objections were warranted – *and they are not* –
6 Plaintiffs have failed to comply with the process set forth in the Protective Order for
7 challenging Toyota’s designations, which involves a mandatory meet and confer
8 process as well as a ninety (90) day period to file a motion for protective order if
9 agreement cannot be reached.

10 Specifically, Paragraph 21 of the Protective Order – which was stipulated to by
11 the parties and entered by the Court on January 19, 2011 – provides the appropriate
12 procedures for challenging the designation of material as “Confidential” or “Highly
13 Confidential.” These procedures consist of the following steps:

- 14 • First, the party challenging the designation must identify, *in writing*, the
15 particular documents and/or information which are subject to the
16 challenge and describe the legal or factual grounds for the seeking their
17 de-designation. (Protective Order, ¶ 21(a).)
- 18 • Second, once a challenge is made, the parties are required to engage in a
19 mandatory meet and confer process in order to resolve their dispute prior
20 to raising the issues with the Court. (Protective Order, ¶ 21(b).)
- 21 • Third, the party designating the confidential material then has ninety (90)
22 days following the challenge to file a motion for protective order.
23 (Protective Order, ¶ 21(b).)

24 Significantly, the Protective Order provides that until the Court rules on the
25 designating party’s motion for protective order, the documents and information at
26 issue are to continue to be treated consistent with their “Confidential” or “Highly
27 Confidential” designations. (Protective Order, ¶ 21(c).)

1 Plaintiffs' Opposition challenging Toyota's designations ignores this process in
2 its entirety. Moreover, Plaintiffs' Opposition provides no explanation as to why
3 certain documents and information should be stripped of their confidentiality.
4 (Protective Order, ¶ 21(a) (requiring that the challenging party "describe the basic
5 legal or factual grounds for the challenge").) Rather, Plaintiffs' Opposition contains
6 only generalized and conclusory statements as to why they believe the materials do
7 not warrant confidential treatment. These contentions, without any legal or factual
8 support, are insufficient.

9 As set forth in Toyota's Application, the designated documents consist of
10 exhibits, discovery responses, deposition testimony and declarations, all of which
11 were properly designated as "Confidential" or "Highly Confidential" under the
12 Protective Order. Any challenge to Toyota's designations therefore must be resolved
13 pursuant to the procedures set forth in the Protective Order. As it appears that
14 Plaintiffs now are challenging the propriety of Toyota's designations, Toyota will
15 abide by its obligations under the Protective Order and contact Plaintiffs' counsel to
16 initiate the mandatory meet and confer process in an effort to resolve these issues. If
17 the parties are not able to resolve the dispute after working together in good faith,
18 Toyota will – within ninety (90) days – file a motion for a protective order asking that
19 the subject documents retain their confidentiality designations.¹ Until resolution of
20 this process, Toyota respectfully requests that the materials submitted in connection
21 with its Application remain designated as "Confidential" or "Highly Confidential" and
22 be kept under seal.²

23
24 ¹ If the Court believes that the ninety (90) day meet and confer/protective order
25 process provided for in the Protective Order is unworkable given the approaching
26 choice-of-law hearing, Toyota respectfully suggests that the Court set an abbreviated
schedule for this process.

27 ² Alternatively, if the Court prefers an expedited process for resolving Plaintiffs'
28 challenges to these designations, Toyota respectfully requests that the Court set an
appropriate briefing schedule to allow the parties to fully address the merits of
Plaintiffs' challenge.

1 Dated: April 13, 2011

Respectfully submitted,

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3 By: _____/s/
4 Lisa Gilford

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